

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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VINCENT DeMARTINO,

Plaintiff,

-against-

MICHAEL ZENK, *et al.*,

Defendants.  
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**TOWNES, United States District Judge:**

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.



AUG 25 2009

P.M.  
TIME A.M.

**MEMORANDUM AND ORDER**

04-CV-3880 (SLT) (LB)

In September 2004, plaintiff, Vincent DeMartino, commenced this *pro se* action pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging that eleven defendants violated his Eighth Amendment rights through their deliberate indifference to his medical needs during the two-year period in which plaintiff was incarcerated in the Metropolitan Detention Center in Brooklyn. In February 2005, defendants moved to dismiss the action or, in the alternative, for summary judgment. In a memorandum and order entered May 25, 2006, this Court granted defendants' motion in part, dismissing plaintiff's claims against nine of the eleven defendants. *See DeMartino v. Zenk*, No. 04-CV-3880 (SLT)(LB), 2006 WL 1455456 (E.D.N.Y. May 25, 2006). However, this Court denied defendants' motion to dismiss the claims against Warden Michael Zenk and Dr. Michael Borecky, without prejudice to renewing the motion after the close of discovery. *Id.* at \*10.

Defendants renewed their motion in April 2008. By order dated April 17, 2008, this Court referred the motion to Magistrate Judge Lois Bloom. On March 30, 2009, Magistrate Judge Bloom issued her report and recommendation ("R&R"), recommending that defendants' motion be granted and that this action be dismissed. That R&R advised plaintiff that he had ten days from service of the R&R in which to file written objections. R&R at 24.

CLM

In a two-page motion dated April 8, 2009, and received by this Court on April 17, 2009, plaintiff requested a 30-day extension of time in which to file his objections. This Court promptly granted plaintiff's application, extending his time to file objections to May 13, 2009. However, as of the date of this Memorandum and Order, plaintiff has neither filed objections to the R&R nor requested a further extension of time in which to do so.

A district court is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Even when no objections are filed, however, many courts seek to satisfy themselves "that there is no clear error on the face of the record." Fed. R. Civ. P. 72(b) advisory committee note (1983 Addition); *see also Edwards v. Town of Huntington*, No. 05 Civ. 339 (NGG) (AKT), 2007 WL 2027913, at \*2 (E.D.N.Y. July 11, 2007).

This Court has reviewed the R&R for clear error on the face of the record. The Court finds no clear error, and therefore adopts the R&R in its entirety as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1).

### **CONCLUSION**

For the reasons stated above, Magistrate Judge Bloom's Report and Recommendation dated March 30, 2009, recommending that the defendants' motion be granted and that this action be dismissed, is adopted in its entirety. This Court will enter judgment in favor of defendants and against plaintiff.

SO ORDERED.

Dated: August 21, 2009  
Brooklyn, New York

  
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SANDRA L. TOWNES  
United States District Judge

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